

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA : :

- v. - : :

18 CR. 880 (VB)

HECTOR MAY, : :

Defendant. : :

-----x

**GOVERNMENT'S SENTENCING MEMORANDUM
REGARDING DEFENDANT HECTOR MAY**

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York
Attorney for the United States of America

VLADISLAV VAINBERG
MARGERY FEINZIG
Assistant United States Attorneys
- Of Counsel -

Table of Contents

I.	Factual Background	2
A.	May's Investment Advisory Business	2
B.	The Manner and Means of the Ponzi Scheme	2
C.	The Ponzi Scheme Unravels	6
D.	Impact on Victims.....	7
II.	Guidelines Calculation.....	13
III.	Sentencing Legal Principles	13
IV.	Section 3553(a) Analysis	15
A.	The Nature and Circumstances of the Offense	15
B.	History and Characteristics of the Defendant.....	19
C.	The Need to Afford Adequate Deterrence.....	23
V.	May's Arguments	23
A.	May's Age Does Not Entitle Him to a Variance from the Guidelines	23
B.	May's Health Conditions Do Not Justify a Variance or Departure from the Guidelines	27
VI.	Conclusion	29

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA :
-----x

- v. - : **18 CR. 880 (VB)**
HECTOR MAY, :
Defendant. :
-----x

**GOVERNMENT'S SENTENCING MEMORANDUM
REGARDING DEFENDANT HECTOR MAY**

The Government respectfully submits this memorandum for the Court's consideration in connection with the sentencing of defendant Hector May ("May" or "the defendant"), which is scheduled for July 31, 2019, at 2:30 p.m.

Hector May, a former financial advisor and founder of his own financial planning firm, maintained a long-running Ponzi scheme, brazenly stealing over \$11 million from at least 16 groups of clients, friends, and relatives. On December 13, 2018, May pleaded guilty to a two-count Information (the "Information") charging him with conspiracy to commit wire fraud and engaging in fraudulent, deceptive, and manipulative practices from the late 1990s through March 9, 2018.

As discussed below, the applicable Sentencing Guidelines range in this case is 188 to 235 months' imprisonment. The Probation Office has recommended a sentence of 120 months' imprisonment. The Government respectfully submits that the extensive, aggravated nature of May's scheme, and its devastating impact on many victims robbed of their retirement savings, warrants a sentence within the Guidelines range, and that a lower sentence would fail to serve the essential sentencing goals of providing just punishment, affording general deterrence, and promoting respect for the law.

I. Factual Background¹

A. May's Investment Advisory Business

In or about 1982, when he was approximately 41 years old, Hector May launched a registered investment adviser and financial planning firm called Executive Compensation Planners (“ECP”) in Rockland County, New York. PSR ¶ 6. As President of ECP, May provided financial advisory services; May recruited dozens of associates, friends, and even relatives to become clients of ECP. *Id.* From about 1993 through the end of the scheme in 2018, May employed one of his daughters, CC-1, as comptroller of ECP and securities compliance specialist. PSR ¶¶ 6-7. May also employed a handful of other staff with administrative roles.

Since 1994, May served as a registered representative of a large national broker-dealer (“Broker Dealer-1”). PSR ¶ 6. In its role as broker-dealer, Broker Dealer-1 facilitated the buying and selling of securities for clients of its registered representatives, including May’s clients. *Id.* Broker Dealer-1 and certain associated clearing firms maintained securities accounts for ECP’s clients. Through those accounts, Broker Dealer-1 held ECP’s clients’ money, executed their securities trades or fund withdrawals requests, produced account statements reflecting activity in the clients’ accounts, and forwarded these account statements to ECP’s clients. *Id.* Broker Dealer-1 also supervised May and ECP and conducted routine audits.

B. The Manner and Means of the Ponzi Scheme

From at least the late 1990s² and through March 2018, when ECP closed operations following the execution of a search warrant on its office, May and CC-1 conspired to defraud at

¹ The Probation Office’s final presentence report dated April 8, 2019 is referenced as the “PSR”. The defendant’s amended sentencing submission filed July 25, 2019 is referenced as “Def. Mem.”

² Although the Information charges the scheme as beginning in or about the late 1990s, at his guilty plea allocution, May allocuted to commencing the conspiracy specifically in 1995. Plea Transcript at 27, 29, *United States v. Hector May*, 18 Cr. 880 (Dec. 13, 2018).

least 16 groups of clients of ECP.³ PSR ¶ 7. These groups included individuals, couples, and employer pension plans, representing additional workers. May misrepresented to the clients that their money was being used to purchase bonds, when instead, May and his daughter simply stole the funds for their own business and personal needs. *Id.*

As part of the scheme, May first convinced his victims that it would be advantageous to purchase bonds for their portfolio. PSR ¶ 7. He encouraged them to allow ECP to purchase bonds for them outside of their Broker Dealer-1 accounts, claiming this would avoid certain transaction fees. *Id.* at 8. He instructed his victims to send a check for the bond purchase to ECP's "custodial" account supposedly set up for each client's benefit. *Id.* Because many clients' investment funds were held at Broker Dealer-1, May, with CC-1's assistance, instructed them to sign paperwork withdrawing funds from their Broker Dealer-1 accounts, and once they received their money, to send a check or wire to ECP for the bond purchase. PSR ¶¶ 8-9. At times, May falsely claimed that the money being withdrawn from the victims' Broker Dealer-1 accounts was actually the proceeds of May's prior bond purchases. *Id.*

Although each client was led to believe that the ECP "custodial" account to which they addressed checks was maintained for their own personal benefit, in reality that account was simply an ordinary checking account controlled by May and CC-1 in which all clients' funds were comingled. PSR ¶ 10. The clients' money did not stay there long. Once client checks or wires earmarked for bond purchases were received, CC-1 tracked the deposits in an electronic accounting program. May and CC-1 then typically transferred the money to ECP's operating bank account. May did not purchase any bonds with the money. Instead, he and CC-1 used the

³ The Government respectfully requests permission to file portions of this memorandum containing sensitive details about victims' identities and the defendant's health conditions under seal, redacting such details in the version publicly filed.

money to pay salaries for themselves and other employees and fund business expenses, a limousine driver, Rockland Country Club dues, political contributions, home remodeling, travel, credit card bills, personal loans to friends, a vacation home, and furs and jewelry for May's wife. *Id.* Put more simply, May and CC-1 funded their life for about 20 years with other people's stolen money. To keep the scheme going, May and CC-1 also used money provided by some victims to pay other victims, including by making supposed bond interest payments or by facilitating withdrawals of funds.

Nearly every month, when ECP ran out of money to maintain its operations and fund the lifestyle May had become accustomed to, May solicited clients for additional "bond purchase" payments. Over nearly a twenty-year period, May persistently defrauded more and more clients, of increasing amounts of money, to keep the scheme going. CC-1 recorded victims' incoming checks or wire transfers in a computerized accounting program and kept track of how much money was stolen. May and CC-1 classified this money for internal and tax purposes as "long term liabilities" and "loan payable" for each listed victim. PSR ¶ 12. For example, in a balance sheet created as of September 20, 2001 for ECP, at least approximately \$1.2 million was characterized as "loan payable" and "long term liabilities" to certain listed known victims. *See, e.g.* Ex. 1 (2001 Balance Sheet).

May and his daughter, CC-1, took many steps to conceal the fraud from the victims and others. First, May and CC-1 created phony "consolidated" account statements that they issued through ECP and sent to the victims. PSR ¶ 11. The statements purported to show the victims' total portfolio balances and included each supposed bond purchase that May claimed to have made and the interest earned on those bonds. *Id.* In reality, all the information on the statements relating to the bonds was made up. *Id.* To make these statements May typically provided CC-1 with handwritten markups with bond names and principal and interest amounts, CC-1 generally

inputted the information into the template fake statements electronically, and then distributed them to the victims. *Id.* May and his daughter also created scores of other documents to legitimize the fake bond purchases, like bond “reconciliations” detailing the exact principal and interest schedules on bonds supposedly purchased. They provided these fake statements to victims and at times their accountants.

May also knew that Broker Dealer-1 sent account statements directly to certain victims, which would show that their funds were depleted in at least those accounts, and that no bond purchases had been made. Apparently to prevent those victims from focusing on these statements, May told them that he would pick them up and incorporate them into the “consolidated” statements made by ECP purportedly showing their entire portfolio. Accordingly, May drove to certain victims’ houses periodically, including a retired couple dealing with the aftermath of the husband’s stroke, to retrieve the real statements. During the search of ECP in March 2018, the Government located in May’s personal office stacks of the real Broker Dealer-1 statements in envelopes sent to his victims.

May also knew that his ECP email account was subject to review and audit by Broker Dealer-1. Accordingly, although he used his ECP email account to communicate with certain clients and Broker Dealer-1 for legitimate business, he created a separate personal email account at the domain name usa.net that he used to target victims with solicitations to purchase bonds.⁴ In those emails, May in some instances instructed victims to call CC-1 if they had any questions about the bond purchase. Additionally, during certain times when representatives of Broker Dealer-1 visited ECP for an audit, May and his daughter sought to conceal the consolidated statements they created for their victims from Broker Dealer-1’s representatives.

⁴ Following the execution of a search warrant and ECP, May consented to a search of that personal email account.

C. The Ponzi Scheme Unravels

Among May's victims were [REDACTED], a couple in their early seventies.

[REDACTED]

[REDACTED]

[REDACTED] developed a close personal relationship with May, and proceeded to invest the family's retirement savings and other assets with him. *Id.* May was the [REDACTED] family's sole financial advisor; among other things, he provided advice on the family's real estate investments, and maintained the family's financial record keeping. Ex. 2 at 1 ([REDACTED] letter). Over multiple decades, May attended the [REDACTED] children's college graduations, weddings, and other family functions, all while stealing millions of the [REDACTED]'s money. PSR ¶ 19.

In 2015, Mr. [REDACTED] suffered a massive, debilitating stroke that left him disabled and hospitalized for more than a year. PSR ¶ 20. Mrs. [REDACTED] scrambled to manage his care and the family's finances. Ex. 2 at 2 ([REDACTED] Letter). May visited the [REDACTED] in the hospital and repeatedly assured Mrs. [REDACTED] that she should focus her energy on helping her husband recover, and to trust him to handle the family's finances just as Mr. [REDACTED] had done. *Id.* He then continued his fraud unchecked, cajoling Mrs. [REDACTED] to send additional funds for bond purchases, and covering them up with fake portfolio statements showing the [REDACTED]'s assets growing under his stewardship. *Id.*

When the [REDACTED] family needed money to pay for living expenses in the wake of Mr. [REDACTED]'s stroke, May repeatedly counseled Mrs. [REDACTED] against taking any assets from their accounts with him. PSR ¶ 21. May claimed that exiting the market would be a disastrous financial decision, knowing that his scheme would be exposed if the [REDACTED] insisted on withdrawing all their assets May had secretly pilfered. *Id.* Instead, May encouraged Mrs.

████████ to borrow money against a home equity line of credit to pay for her and her husband's living expenses, claiming that the profits he would generate from maintaining their investments would be used to repay the loan later. Ex. 2 at 2 █████ Letter).

In the fall of 2017, Mrs █████ began discussing with May the possibility of switching her family's accounts to another brokerage firm. PSR ¶ 22. May repeatedly attempted to dissuade her from doing so, emailing her "DO NOTHING SELL NOTHING MOVE NOTHING. Selling and getting out of the market is not the thing to do." PSR ¶ 21. In February 2018, notwithstanding May's frantic attempts to keep his scam going, Mrs. █████ arranged for another brokerage firm to initiate a transfer of the family's accounts at Broker Dealer-1. *Id.* The new brokerage firm then informed Mrs. █████ that the accounts held little to no assets. Mrs. █████ repeatedly and desperately called May for an explanation. May callously ignored her calls and then finally referred her to his criminal defense attorney. *Id.* Mrs. █████ reached out to Broker Dealer-1, who commenced an unannounced audit at ECP's premises the week of March 5, 2008. Mrs. █████ also reported on the potential fraud to the United States Attorney's Office, who obtained a warrant to search and seize files from ECP's office during the same week.

Following the execution of the search warrant, May met with the Government to provide information about his and CC-1's scheme and his remaining financial assets, consented to the search of additional premises and an email account, and ultimately waived indictment and pleaded guilty to the charges in the Information.

D. Impact on Victims

As with many Ponzi schemes, this one was successful for so long because May carefully chose victims, such as close friends and relatives, who would trust him and were less likely to uncover his fraud. PSR ¶ 7.

May then abused that trust by repeatedly targeting the same victims for money, and

spending nearly all of the money entrusted to them. Many of the victims in this case have submitted heartfelt, difficult-to-write letters to the Court detailing the tremendous emotional and financial loss, pain, and suffering caused by May's betrayal. These letters demonstrate May's premeditation, ruthlessness, and seemingly sociopathic lack of empathy in picking and defrauding his victims.⁵ The Government highlights certain salient facts about some of the victims below.

1. The [REDACTED] Family

[REDACTED]

[REDACTED] As discussed above, they had a close personal and business relationship with May for decades, going back to when May was managing funds for Mr. [REDACTED]'s own father. May had ingratiated himself into the [REDACTED] attending family functions and holding himself out as a financial expert who had their best interests at heart. Ex. 2 at 1 [REDACTED] Letter). In 2015, after Mr. [REDACTED] was stricken with a debilitating stroke, May capitalized on that tragedy by convincing Mrs. [REDACTED] to trust him, just as her husband had done, and extracting more money from her additional "bond" purchases. *Id.* at 2. He imposed on Mrs. [REDACTED] to take out a [REDACTED] home equity loan of credit to pay for her family's living expenses, all while maintaining the lie that he still had millions of dollars of the family's assets under management that should not be withdrawn. *Id.* May promised that the [REDACTED] would be able to repay that home equity loan from the profits on the investments they were keeping at Broker Dealer-1 – knowing that the accounts had been nearly depleted. *Id.* May then callously ignored Mrs. [REDACTED] desperate calls and emails to him after she uncovered signs that their money was gone.

⁵ The Government is currently aware of three victims who would like to exercise their right to speak at sentencing to provide the Court with additional information to their written statements: [REDACTED]

The [REDACTED] discovery that May had stolen and spent the family's retirement savings has been "devastating." PSR ¶ 23. The [REDACTED] have had to sell their homes [REDACTED] [REDACTED] to pay for ongoing living expenses and to pay off their home equity loan May duped Mrs. [REDACTED] into using so he could continue stealing from them. *Id.* Nearly all of the money they saved for retirement, and to help their children and grandchildren is gone. Ex. 2 at 2 ([REDACTED] Letter). [REDACTED] has not slept normally for the past year, tormented by memories of May's relationship with her family throughout the course of the fraud and the comments he had made while secretly stealing their funds. She remembers May telling them, "money is not the root of all evil, greed is." *Id.*

2. The [REDACTED] Family

Prior to the discovery of this fraud, [REDACTED] had considered May to be "one of dearest and closest friends of almost twenty years." Ex. 2 at 5 ([REDACTED] Letter). "He was a man we trusted and respected. He was our friend before and after he became our financial advisor. We shared and celebrated joyous occasions and supported each other in times of heartbreak. We rang in the New Year together. We socialized regularly. He and [his wife] were houseguests [REDACTED]." *Id.* May knew the [REDACTED] children and grandchildren. *Id.* He attended family weddings and funerals. *Id.*

In 2017 and 2018, needing more money to keep the Ponzi scheme and his own lavish lifestyle going, May decided to victimize his closest friends:

[May] knew [REDACTED] fears and anxiety about money and how conservative I was in our planning. He approached us in 2017 about putting our money in bonds as he felt we were due for a correction in the stock market and bonds would be more secure. I was uncomfortable about the way he had us precede. I shared this concern [REDACTED] but then dismissed it by saying "it's Hector... he would NEVER hurt us." He knew I worried about outliving our investments. He would tell me not to worry because he treated our money like it was his own. He was aware of our struggles and our hopes and dreams for our children and us. He knew our story. We were not faceless clients! This is why Hector May stole so much more

from us then our savings!! He stole my belief in the essential goodness of the human spirit. His BETRAYAL stole my faith, my trust, my security, my joy and gratitude of each day. In turn he left me with not only a diminished bank account but with a heavy, tormented, fearful, angry heart and many of the symptoms associated with Post Traumatic Stress Syndrome. As much as I try to put this horror behind me it keeps rearing [its] ugly head with sleepless nights and stress related health issues.

Id.

3. The [REDACTED] Family

As detailed in their victim impact statement, *see* Ex. 2 at 10, [REDACTED]

ran a local restaurant in May's community, and chose May as their investment advisor on the recommendation of a community member. When they questioned May about their investments, he presented them with fake statements, as he did with other victims. *Id.* In addition to investing over [REDACTED] with May, the [REDACTED] allowed May to open up a house account at their restaurant. May and his wife would come in weekly to the restaurant, dine, and put the bill on his house account that May never paid off. While knowing that he was secretly defrauding the [REDACTED] of their hard-earned savings, May apparently had no compunction about deliberately putting himself in front of his victims every week to score an additional free meal. The impact on the [REDACTED] has been nothing short of devastating:

May imposed himself into our family and has robbed us of our trust of people. Knowing what we know about Mr. May, many instances, conversations and times spent together, come to our minds. We go over and over it and still cannot believe how many years he had been living a double life. We have lost sleep over this and feel so violated. To add insult over injury, we believe Mr. May has [n]o remorse. We believe he is not even capable of remorse. . . . He openly looked down on people especially if he thought they didn't have a lot of money.

Id.

4. The [REDACTED] Family

The [REDACTED] had known May since the 1990s. Ex. 2 at 7 ([REDACTED] Letter). They found May affable and accommodating, a person who remembered their birthdays, and worked hard to build their trust and rapport. *Id.* They saw May create a respected and influential image for himself in

the community and live a comfortable lifestyle. *Id.* For their part, the [REDACTED] were not people of significant means. [REDACTED] worked “long hard days from 4:00 a.m. to night,” and his wife worked full time to put away funds for their retirement. *Id.* at 8. They denied themselves certain comforts, and did not live lavishly, to ensure a dignified retirement. *Id.* May’s fraud turned their life upside down. *Id.* at 9. They no longer know who to trust as they attempt to reconcile what funds they have left and plan for their retirement. *Id.* at 8.

5. The [REDACTED] Family

[REDACTED] are both May’s age, 78 years old. Ex. 2 at 12 ([REDACTED]
 [REDACTED] They met May over twenty years ago [REDACTED]
 [REDACTED] *Id.* Mr. [REDACTED], a carpenter and pizzeria worker, ultimately invested his entire life’s savings with May. Ex. 2 at 12. Like many of May’s other victims, [REDACTED] were not rich and relied heavily on the money they entrusted to May for their retirement:

Hector May knew my parents trusted him and invested their entire life savings with him. He also knew how hard my father worked in the pizzeria for years, and as a carpenter. Hector knew my parents would give him every penny they could save, totally trusting him, believing they were building their retirement. He knew my father is 78 years old[,] didn’t have a pension, couldn’t live off social security, doesn’t have a life time to save again and would have to incur legal fees in order to recoup the money he would steal from them yet without remorse he did so anyway. Only a heartless person without a conscience would do such appalling inhumane acts. Hector May never took any steps to repay what he had stolen.

More than a year later, the impact of May’s crime on the [REDACTED] remains devastating. Mr. [REDACTED] has been forced to postpone retirement and continue to work at the age of 78. *Id.* Mrs. [REDACTED] has been suffering from bad anxiety. *Id.* As shared by their daughter, “[t]hey still can not discuss Hector May without getting very emotional. The stress can trigger seizures along with the anxiety for my mother and I just can’t watch my father cry when he tries but can’t

understand why and how Hector May could and would steal his life savings.” *Id.* at 12-13.

6. [REDACTED]

For [REDACTED] May’s fraud turned her life and her family’s life in “irreversible upheaval.” *See* Ex. 2 at 11 ([REDACTED] Letter). Upon learning that the money she was told had grown under May’s management was gone, [REDACTED] has had to change her line of work, and take on a full time position to make ends meet. *Id.* She has not been able to care for her ailing mother as before when she was self-employed. *Id.* She has been forced to sell her house. *Id.* Her son, a student who used to live and work out of her home, will now have to find different working and living arrangements. *Id.* Her daughter, who recently got married and was planning to move into her house to save money as they start a family, will now also have to somehow find other arrangements. *Id.*

7. [REDACTED] Corporation

May also stole money from employee pension plans entrusted to his care by [REDACTED] Corporation, [REDACTED]. *See* Ex. 2 at 4 ([REDACTED] letter). The pension plans covered at least twelve employees and their families. *Id.* May had a family connection to the company, and also knew its current president and colleagues for over 25 years. *Id.* Over the years, May flagrantly breached his responsibilities as the plan’s fiduciary, and misappropriated approximately \$1.5 million of the employees’ retirement savings. PSR ¶ 16. As shared by the company’s current president, May “was aware that many employees were in tough financial positions, trying to support multiple children going through college or other family / health emergencies, and he went on to take from our retirement plans regardless of this intimate knowledge.” Ex. 2 at 4.

II. Guidelines Calculation

The Probation Office has calculated the United States Sentencing Guidelines (the “Guidelines”) applicable to this offense consistently with what the parties stipulated in their plea agreement. PSR ¶¶ 83-84. The defendant’s amended sentencing submission filed July 25, 2019, does not challenge the Probation Office’s Guidelines calculation.

May’s total offense level under the Guidelines is 36, based on the following:

- Counts 1 and 2 are grouped pursuant to U.S.S.G. § 3D1.2(a), with Count 1 being used to determine the guidelines for the group.
- The offense has a base offense level of 7 pursuant to § 2B1.1(a)(1);
- A 20-level increase is warranted pursuant to § 2B1.1(b)(1)(H) based on an aggregate intended loss amount of \$11,364,657.48, representing all proceeds fraudulently obtained by May in the course of the scheme;
- A 4-level increase is warranted pursuant to § 2B1.1(b)(2)(B) because the offense resulted in substantial hardship to five or more victims;
- A 2-level increase is warranted pursuant to § 2B1.1(b)(10)(C) because the offense involved sophisticated means;
- A 4-level increase is warranted pursuant to § 2B1.1(b)(20)(A)(iii) because the offense involved a violation of securities law and the defendant was associated with an investment adviser;
- A 2-level increase is warranted pursuant to § 3B1.3 because, in perpetrating the offense, May abused a position of private trust in a manner that significantly facilitated the commission and concealment of the offenses; and
- A 3-level decrease is warranted pursuant to § 3E1.1(a) and (b) because the defendant demonstrated acceptance of responsibility for the offense by timely entering a guilty plea.

May’s criminal history category is I. PSR ¶ 49. Based on an offense level of 36 and a criminal history category of I, the applicable Guidelines range is 188 to 235 months’ imprisonment. PSR ¶ 83.

III. Sentencing Legal Principles

The Guidelines are no longer mandatory, but they still provide important guidance to the Court following *United States v. Booker*, 543 U.S. 220 (2005), and *United States v. Crosby*, 397 F.3d 103 (2d Cir. 2005). “[A] district court should begin all sentencing proceedings by correctly

calculating the applicable Guidelines range,” which “should be the starting point and the initial benchmark.” *Gall v. United States*, 552 U.S. 38, 49 (2007). The Guidelines range is thus “the lodestar” that “anchor[s]” the district court’s discretion. *Molina-Martinez v. United States*, 136 S. Ct. 1338, 1345-46 (2016) (quoting *Peugh v. United States*, 133 S. Ct. 2072, 2087 (2013)) (internal quotation marks omitted).

After making the initial Guidelines calculation, a sentencing judge must consider the factors outlined in Title 18, United States Code, Section 3553(a), and “impose a sentence sufficient, but not greater than necessary, to comply with the purposes” of sentencing, 18 U.S.C. § 3553(a), which are: “a) the need to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for that offense; b) the need to afford adequate deterrence to criminal conduct; c) the need to protect the public from further crimes by the defendant; and d) the need for rehabilitation.” *United States v. Cawera*, 550 F.3d 180, 188 (2d Cir. 2008) (citing 18 U.S.C. § 3553(a)(2)).

Under Section 3553(a), “in determining the particular sentence to impose,” the Court must consider: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the statutory purposes noted above; (3) the kinds of sentences available; (4) the kinds of sentence and the sentencing range as set forth in the Sentencing Guidelines; (5) the Sentencing Guidelines policy statements; (6) the need to avoid unwarranted sentencing disparities; and (7) the need to provide restitution to any victims of the offense. *See* 18 U.S.C. § 3553(a).

In light of *Booker*, the Second Circuit has instructed that district courts should engage in a three-step sentencing procedure. *See Crosby*, 397 F.3d at 103. First, the Court must determine the applicable Sentencing Guidelines range, and in so doing, “the sentencing judge will be entitled to find all of the facts that the Guidelines make relevant to the determination of a Guidelines sentence and all of the facts relevant to the determination of a non-Guidelines sentence.” *Id.* at

112; *see also United States v. Corsey*, 723 F.3d 366, 375 (2d Cir. 2013) (“Even in cases where courts depart or impose a non-Guidelines sentence, the Guidelines range sets an important benchmark against which to measure an appropriate sentence.”). Second, the Court must consider whether a departure from that Guidelines range is appropriate. *Crosby*, 397 F.3d at 112. Third, the Court must consider the Guidelines range, “along with all of the factors listed in section 3553(a),” and determine the sentence to impose. *Id.* In so doing, it is entirely proper for a judge to take into consideration his or her own sense of what is a fair and just sentence under all the circumstances. *United States v. Jones*, 460 F.3d 191, 195 (2d Cir. 2006).

IV. Section 3553(a) Analysis

The Government respectfully submits that a sentence within the Guidelines range of 188 to 235 months’ imprisonment is necessary to reflect the seriousness and aggravated nature of May’s crimes, provide just punishment, afford general deterrence, and promote respect for the law.

A. The Nature and Circumstances of the Offense

For nearly two decades, May conceived and orchestrated a multi-million dollar Ponzi scheme by which he defrauded individuals and pension funds, who placed money directly with his registered investment advisory firm, ECP. May solicited these investments under false pretenses, failed to invest such funds as promised, and misappropriated and converted investors’ funds for his own benefit. He used his victims’ funds to maintain lavish lifestyle and position of influence for himself in Rockland County. May’s conduct during the Ponzi scheme was marked by extreme cunning, ruthlessness, and utter disregard for the well-being of his victims, many of whom regarded him as a close friend. For the reasons stated below, May’s crimes were extremely serious and aggravated by several factors, all of which make him exceptionally deserving of a Guidelines sentence.

First, the scope, duration, and nature of May’s crimes warrant a Guidelines sentence. May obtained over \$11 million from at least 16 different groups of victims in a brazen, long-running fraud. He caused at least \$8 million in actual losses to the victims. His conduct during this scheme represents literally hundreds of criminal decisions and frauds conducted over the course of nearly twenty years. Every time that May ran out of money, often multiple times in the same month, he needed to find some victim to persuade to invest even more money into “bonds.” And every time, May had to come up with the type of bond he would be purchasing, the interest rate that it would pay, and the rationale for each particular victim to invest in that bond at that time. He had to meet with his victims in person and over the phone. He and CC-1 had to navigate the logistics of getting the victim to free up the funds from Broker Dealer-1 if they did not have it readily available. May had to remember to include each “bond” in his phony portfolio mark-ups and CC-1 had to create new statements and reconciliations. May also had to pay the actual interest from the fake bond. He and CC-1 had to initiate monthly “interest” transactions back to the clients, in reality coming from other people’s money.

Furthermore, each time May chose to spend his victims’ funds out of ECP’s custodial and operating accounts—whether to buy furs and jewelry for his wife, make political contributions, pay his country club dues, retain a limousine driver, travel, engage in home remodeling, or simply to give money to his family and others—he had to make yet another separate, conscious choice to steal from his victims. And he made that choice repeatedly, hundreds of times over the course of about twenty years, stopping only when he was caught. This systematic, methodical, and egregious conduct amply supports a Guidelines sentence.

Second, the scheme in this case is aggravated by May’s orchestration of it as a conspiracy into which he corrupted his own daughter. May’s daughter had worked at ECP for several years in the 1990s before May began stealing client funds under fraudulent pretenses. To maintain the

Ponzi scheme, May needed a technically proficient person he could trust to create fake consolidated portfolio statements on the computer, process the victims' money, and cover for him with Broker Dealer-1. The fact that he chose his daughter, exposing her to criminal jeopardy, makes him particularly deserving of substantial punishment. Equally alarming, May had bragged to the current president of the company whose pension fund plans he defrauded that he planned to bring [REDACTED] into his business—[REDACTED] to take over his position upon his retirement, a "horrifying idea given the way he manipulated his position." Ex. 2 at 4 ([REDACTED] Letter).

Third, while May has accepted responsibility for the offense by pleading guilty, he "has abjectly failed to manifest any semblance of contrition, remorse or guilt." PSR p. 26. At least based on May's counsel's sentencing submission, May's apparent justification for the offense is that he wanted to be a successful businessman for his clients, started to struggle in the late 1990s, and therefore spent his friends and clients' money with the hope that he would "eventually" put it back. Def. Mem. at 5. According to May's submission, these offenses were arguably "an attempt to remain legitimate and keep his status as a contributing member of the community." *Id.* May's arguments are simply self-serving delusions. This is not a defendant who was trying to do the right thing through the wrong means. His "business" stopped being "legitimate" from the moment that he stole his first victim's funds in order to prop it up. His claimed status as a "contributing member of the community" was built on manipulating and defrauding other people. He did not use victims' money in any sort of attempt to earn more money back for them, like actually purchasing the bonds he claimed were earning interest for his clients. Instead, May persistently spent his victims' dwindling assets to pay for business and personal expenses for himself and his co-conspirator daughter.

And even if one were to credit the notion that he had "hoped" to pay his victims back, May's actions show that hope to be hollow. Just about every month and year, as May continued to burn through other people's money for his own personal and business needs, watching his tracked "long

term liabilities" swell into the millions of dollars, May faced the inescapable reality that he would never be in a position to repay the money. He did not care. He did not stop. He did not cut his victims' losses. He just committed more and more frauds, with more lies, more victims, and more devastation in his wake.

Fourth, May brazenly committed these crimes while inviting public attention as a respected financial advisor and a civic leader. In fact, in 2009, after the arrest of Pearl River hedge-fund operator James Nicholson for a \$140 million Ponzi scheme, May gave an interview to The Journal News, warning investors to do their due diligence when choosing someone to manage finances. *See* Ex. 3 (*Hector May, under federal probe, cast influence across Rockland*, The Journal News, April 4, 2018, <https://www.lohud.com/story/news/local/rockland/2018/04/04/hector-may-influence/477901002/>). In that interview, May was quoted as saying, "I have a lot of empathy for the people who got hurt, but before you invest a million dollars, do your due diligence. . . . Otherwise, it's like going to get a heart operation and you don't even know if he's a doctor." *Id.* At the time May gave this interview, by his own internal accounting, he had already stolen over \$4 million from over ten victims. May's interview makes two things clear about his state of mind during the scheme: first, he was extremely confident that he would not be caught, and second, he held the victims to blame for allowing themselves to be duped into frauds like the one he was perpetrating. In 2010, Nicholson was sentenced to a term of 40 years in prison. *See United States v. James Nicholson*, 09 Cr. 414 (RJS), Doc. No. 75, (S.D.N.Y. Oct. 29, 2010).

Finally, as evident in the victims' poignant submissions to the Court, May's crimes caused tremendous pain and hardship to people who regarded him as both a fiduciary and a close friend. May victimized the people who were least likely to question his motives: people who welcomed May into the tight social fabric of their lives at birthdays, weddings, holiday celebrations, and funerals. He victimized relatives and friends who warmly invited him and his family into their homes and places of business, people who fed him meals and celebrated his

successes with him. He victimized aging couples, blue collar workers, and people he knew suffered personal tragedy. He used whatever means necessary to get more cash. In 2015, he visited one of his victims in the hospital after a debilitating stroke and told the victim's spouse to focus on her husband's health, while May would take care of the family's finances. May knew that by that point, he had already stolen and spent millions of this family's money. He mercilessly proceeded to extract at least \$175,000 more from those victims over the course of the following year, even getting them to take out a home equity loan when they needed money for their own living expenses. May did not care about the perilous situation his victims would face when his fraud would inevitably come to light. That time is here now. With profound collateral impacts on their families, some of May's victims have had to sell their homes and prized possessions, indefinitely put off retirement, and struggle to make ends meet.

One of the themes running through the victims' letters to this Court is how much the discovery of May's betrayal has also hurt them emotionally – how they replay their interactions with him over the course of decades of their lives. They think about the promises he made to safeguard their money as his own, and the plans he knew they had for that money. They think about how hard they had worked to save up their nest eggs and how May had stolen the fruits of their lifelong labor to fund his image as a well-off civic leader. The letters make clear that the financial hardships they are suffering are equally matched by a loss of joy and the capacity to trust, and in some cases extreme anxiety and post-traumatic stress disorder. The extraordinary damage May has caused to his innocent victims warrants a stiff punishment within the Guidelines range.

B. History and Characteristics of the Defendant

Unlike many defendants who appear before this Court, May had a good childhood and grew up in a supportive, stable, nuclear family. PSR ¶ 54. He has been married for over fifty years, has two daughters, and reported no history of drug or alcohol abuse. PSR ¶¶ 55-57, 65.

May’s decision to squander millions of dollars of his clients’ money on personal luxuries like four cars, a limo, country club membership, and political and charitable contributions that elevated his image show that his crimes were driven by ego and greed, and not by any financial necessity.

May chose to steal and defraud in order to maintain a lavish lifestyle, even if it meant breaking the law.

May has submitted two letters attesting to his supposedly positive personal qualities and his service to the community. *See* Def. Mem., Ex. 3. It is, of course, appropriate for the Court to take these letters into account in connection with sentencing. However, the Government asks that, in so doing, the Court consider the following four points. First, any attestations to May’s positive personal qualities do not distinguish him from other similarly situated white-collar defendants—individuals who, despite having many opportunities and a network of people who love and support them, nonetheless choose to steal and defraud. As Judge Marrero astutely observed, this sort of letter:

falls into a pattern advanced by a subset of the white collar criminal. . . . The list of their achievements and virtues is long and impressive. Let us count the ways. At home, they are good family men and women, caring spouses, loving parents, loyal and reliable to friends. At work, they are looked up to as outstanding professionals and business partners. To their community’s charities and public causes they are generous patrons and sponsors.

United States v. Regensberg, 635 F. Supp. 2d 306, 308 (S.D.N.Y. 2009), *aff’d*, 381 F. App’x 60 (2d Cir. 2010). Similarly, May’s contributions on various non-profit boards and volunteer efforts while commendable, are not atypical for an educated white-collar offender and do not warrant a downward departure or variance. *See United States v. Vrdolyak*, 593 F.3d 676, 682-83 (7th Cir. 2010) (“[I]t is usual and ordinary, in the prosecution of similar white-collar crimes . . . to find that a defendant was involved as a leader in community charities, civic organizations, and church efforts,” and the defendant “should not be allowed to treat charity as a get-out-of-jail card” (citation and internal quotation marks omitted)); *United States v. Crouse*, 145 F.3d 786, 792 (6th

Cir. 1998) (defendant's civic contributions, not atypical for a prominent businessman, did not support nine-level downward departure); *United States v. Morken*, 133 F.3d 628, 630 (8th Cir. 1998) (defendant's charitable and other good works did not justify departure from Guidelines); *United States v. Haversat*, 22 F.3d 790, 796 (8th Cir. 1994) (defendant's charitable and volunteer activities did not make him atypical).

Second, the letter writers' attestations to May's positive qualities, such as the claim that he "always had morality in his actions," Def. Mem., Ex. 3 at 2, have diminished value because May has demonstrated an extraordinary ability to deceive his victims, family and friends about his criminal activities. May is a skilled and inveterate liar. For decades, he lied repeatedly to nearly everyone that his crimes touched: at least sixteen groups of victims, their family members, their accountants, his supervising broker-dealer's representatives, his employees not involved in the fraud, and his own family members. Given that May was successful in deceiving so many people close to him for so long, the two attestations he has presented to his positive character do not bear significant weight.

Third, to the extent that May or the letter writers suggest that May's humiliation and loss of social or professional standing as a result of his convictions warrant a lighter sentence, *see, e.g.*, Def. Mem. at 7 ("Mr. May's personal and professional reputation is destroyed . . . the destruction of the defendant's business has already achieved to a significant extent some although not all of the objectives otherwise required to be sought through the sentencing process"), this claim should be rejected. Any notion that successful white-collar criminals should be sentenced more lightly than defendants of a lower socioeconomic status cannot not be countenanced. "It is impermissible for a court to impose a lighter sentence on white-collar defendants than on blue-collar defendants because it reasons that white-collar offenders suffer greater reputational harm or have more to lose by conviction." *United States v. Prosperi*, 686 F.3d 32, 47 (1st Cir. 2012) (citing U.S.S.G. §

5H1.2); *see also United States v. Musgrave*, 761 F.3d 602, 608 (6th Cir. 2014) (“In imposing a sentence of one day with credit for the day of processing, the district court relied heavily on the fact that Musgrave had already ‘been punished extraordinarily’ by four years of legal proceedings, legal fees, the likely loss of his CPA license, and felony convictions that would follow him for the rest of his life. ‘[N]one of these things are [his] sentence. Nor are they consequences of his sentence’; a diminished sentence based on these considerations does not reflect the seriousness of his offense or effect just punishment.” (citation omitted)); *United States v. Kuhlman*, 711 F.3d 1321, 1329 (11th Cir. 2013) (“The Sentencing Guidelines authorize no special sentencing discounts on account of economic or social status.”). As the Seventh Circuit has observed:

[N]o “middle class” sentencing discounts are authorized. Business criminals are not to be treated more leniently than members of the “criminal class” just by virtue of being regularly employed or otherwise productively engaged in lawful economic activity. It is natural for judges, drawn as they (as we) are from the middle or upper-middle class, to sympathize with criminals drawn from the same class. But in this instance we must fight our nature. Criminals who have the education and training that enables people to make a decent living without resorting to crime are more rather than less culpable than their desperately poor and deprived brethren in crime.

United States v. Stefonek, 179 F.3d 1030, 1038 (7th Cir. 1999) (citation omitted).

Finally, as discussed above, this is *not* a case where the offense conduct was wildly aberrant or prompted by a brief lapse in judgment and where, as a result, it might be appropriate to give more weight to the defendant’s otherwise law-abiding life. For more than 20 years, May has perpetrated countless frauds against his close friends, relatives, blue-collar workers contributing to their pension plans, and scores of other people who trusted him with their money.

Accordingly, even crediting the testimonials May has submitted in connection with sentencing—and the Government does not in any way question their sincerity—the defendant has shown himself to be an inveterate fraudster and thief, and not someone who deserves any benefit of the doubt with respect to this Court’s judgment of his character.

C. The Need to Afford Adequate Deterrence

One of the paramount factors that the Court must consider in imposing sentence under Section 3553(a) is the need for the sentence to “afford adequate deterrence to criminal conduct.” 18 U.S.C. § 3553(a)(2)(B). Courts have generally recognized that “white collar crime . . . requires heavy sentences to deter because it is potentially very lucrative.” *United States v. Hauptman*, 111 F.3d 48, 52 (7th Cir. 1997). “Because economic and fraud-based crimes are more rational, cool, and calculated than sudden crimes of passion or opportunity, these crimes are prime candidates for general deterrence.” *United States v. Martin*, 455 F.3d 1227, 1240 (11th Cir. 2006) (internal quotation omitted). “Defendants in white collar crimes often calculate the financial gain and risk of loss, and white collar crime therefore can be affected and reduced with serious punishment.” *Id.* It is particularly important to deter those, who by their profession have custody and fiduciary responsibility over other people’s money, to resist the temptation to embezzle what is entrusted to them.

V. May’s Arguments

May principally argues that his age and health warrant a variance in this case, stressing that he is a 78-year old man facing a de-facto life sentence. *See* Def. Mem. at 6-7, 11. The Court should reject this argument.

A. May’s Age Does Not Entitle Him to a Variance from the Guidelines

Part H of the Sentencing Guidelines provides that departures based upon a defendant’s age, medical health, and mental status “may be relevant” in imposing a sentence, but only when those characteristics are “present to an unusual degree and distinguish the case from the typical cases covered by the guidelines.” U.S.S.G. §§ 5H1.1, 1.3, 1.4. The Guidelines note that in the case of a seriously infirm and/or elderly defendant, home confinement may be as efficient as, and less costly than, imprisonment. U.S.S.G. §§ 5H1.1, 1.4. However, those statements “[do] not suggest

that imprisonment is *never* appropriate for infirm defendants or that a judge abuses his discretion if he sentences a defendant with serious health problems to prison.” *United States v. Poetz*, 582 F.3d 835, 838 (7th Cir. 2009) (emphasis in original). In *Poetz*, the defendant, who pleaded guilty to stealing approximately \$300,000 from the U.S. Forestry Service, *id.* at 836, suffered from various gastrointestinal disorders, seizure disorder, several upper respiratory diseases, arthritis, and early onset diabetes. *Id.* In affirming a custodial sentence, the Seventh Circuit noted that the sentencing judge “explained that despite Poetz’s medical issues, a period of incarceration was ‘fundamentally required’ to promote respect for the law, provide for deterrence, and hold Poetz accountable for her breach of the trust placed in stewards of public funds.” *Id.* at 838 (quoting *United States v. Cunningham*, 429 F.3d 673, 679 (7th Cir. 2005)).

Courts routinely reject the notion that an older defendant should be entitled to finish his life at liberty where, as here, the offense involved extensive, sustained criminal conduct over a long period of time that resulted in significant harm. In *United States v. Sejan*, 547 F.3d 993 (9th Cir. 2008), for instance, the district court sentenced an 87-year old defendant to 240 months’ imprisonment, which was 22 months below the low end of the Guidelines range. Affirming the district court’s sentence, the Ninth Circuit noted:

Seljan argues that the district court did not adequately consider his advanced age. This argument is meritless. The district court acknowledged that Seljan’s age and health reduced the likelihood of recidivism, and it addressed Seljan’s concern that the 20-year sentence at age 87 was tantamount to life imprisonment. The district court even considered the sentence that a defendant without a prior conviction would receive. Indeed, the sentence imposed by the district court was 22 months below the low end of the Guidelines range. Seljan argues only that the reduction should have been even greater. On this record, however, the district court’s sentence was reasonable.

Id. at 1007; *see also United States v. Lewis*, 594 F.3d 1270, 1275-78 (10th Cir. 2010) (affirming 330-year sentence for fraud offenses and upholding district court’s rejection of a 72-year old defendant’s request for a variance based upon age and health); *United States v. Dowd*, 451 F.3d

1244, 1256-57 (11th Cir. 2006) (rejecting the defendant's argument that his 305-month sentence was unreasonable because he was 65 years old); *United States v. Kerns*, 336 F. App'x 916, 918-19 (11th Cir. 2009) (rejecting the defendant's argument that his 240-month sentence for fraud offenses was a *de facto* life sentence and noting that "the district court weighed [the defendant's] advanced age against the seriousness of his offense and the need to protect the public from fraud"). In *United States v. Moses*, 337 F. App'x 443 (6th Cir. 2009), the district court sentenced a 71-year-old defendant to 210 months' imprisonment on conviction for a fraud that involved, *inter alia*, a \$15 million loss, the use of false statements and documents, and the use of shell companies to conceal the fraud. Like May, the defendant in *Moses* contended "that it is substantively unreasonable to sentence an elderly, ill [defendant] to such a harsh prison term for nonviolent, economic crimes." *Id.* at 450.⁶ Affirming the sentence, the Sixth Circuit noted that the district court had found that the defendant's fraud was the "most extensive that it had encountered in thirty years," and noted that "[w]hile a district court *may* sentence infirm defendants to a non-prison sentence, it need not do so." *Id.* (emphasis in original) (internal citation omitted).

In *United States v. Emanuel Cohen*, 15 Cr. 396 (LAK), Judge Kaplan rejected a requested downward variance for a 73-year-old, infirm white-collar defendant, observing:

With people in this age bracket, it is a very small number, really, from this social and economic bracket of society who can't make a medical case for avoiding incarceration of some level of persuasiveness or another. Sentences in cases like this, therefore, have to be cognizant of the need for people in general who, were they informed of the circumstances, to say well, this individual is going to pay a price for the crime, maybe not the same price that the individual would pay if he was a healthy 48-year old, but a serious price. There has got to be a perception that justice is done, that people get their just desserts, and that requires judges to impose sentences in some cases that if the sentences were considered only from

⁶ Moses's ailments included coronary artery disease, removal of her colon, loss of feeling in her legs due to nerve damage, atrial fibrillation, frail kidneys, and an auto-immune disorder which can cause fatigue, joint pain, and problems with vital organs and the nervous system. (See Defendant's Sentencing Memorandum at 9-10 & n.6, *United States v. Moses*, No. 2:96-cr-80274-PJD (E.D. Mich. July 16, 2007), ECF No. 417).

the perspective of the defendant being sentenced might be harsher, more severe than might seem appropriate.

Transcript of Sentencing Hearing at 22, *United States v. Cohen*, No. 15 Cr. 396 (LAK) (S.D.N.Y. Sept. 29, 2016), ECF No. 88.

Likewise, in *United States v. Murphy*, 11-CR-137 (C.D. Cal.), Judge Carter explained the vital importance of deterrence, and the perception of equal justice, when imposing a 97-month sentence on a 70-year-old white-collar defendant who had carried out a \$2.9 million investment fraud scheme:

I don't think a Court can allow you or somebody in a similar position to walk away from a sentencing, literally taking a round figure of 8, 9, 10, 11, 12 years, whatever that sentence is, and multiply that into a \$3 million loss and, basically, make \$300,000 a year on fraudulent activities. There, the government has a huge argument that I think the Courts need to pay attention to; and that is, not only you, but what's the deterrent value for people reading, hearing, or taking into account this kind of conduct?

Is it that because we're older we can go out and commit these crimes, but somebody in the 40's gets 10 years? Somebody in their 70's get 41 months? I don't think so. I think you're just as accountable as a person who's 40 or 50.

And maybe the argument could be made, with our life experiences—because I'm in the same age range as you—maybe just as accountable for our conduct after a lifetime of living and learning what's appropriate, ethical and right.

(Transcript of Sentencing Hearing at 85-86, *United States v. Murphy*, No. 11 CR 137 (C.D. Cal. Aug. 2, 2013), ECF No. 99).

In 2009, the same year that May cajoled investors to perform more due diligence on their financial advisors lest they be defrauded, seventy-year old Bernard Madoff was sentenced to 150 years in prison. *See United States v. Bernard Madoff*, 09 Cr. 213 (DC) (S.D.N.Y. June 29, 2009). In 2010, forty-three year old Ponzi schemer James Nicholson was sentenced to forty years imprisonment, a term that will extend into his early eighties, subject to time off for good behavior. *See United States v. James Nicholson*, 09 Cr. 414 (RJS), Doc. No. 75, (S.D.N.Y. Oct. 29, 2010).

Earlier this year, Judge Román addressed similar arguments about age and health made by Joseph Scali, a sixty-nine year old defendant convicted in this court at trial of fraud, tax evasion, perjury, and obstruction of justice, with an aggregate loss amount of approximately \$1.4 million. In sentencing Scali to seven years in prison, Judge Roman stressed that the evidence “showed a pattern of deceit and dishonesty. You embezzled monies, not out of necessity, but out of pure greed.”

Transcript of Sentencing Hearing at 113, *United States v. Joseph Scali*, S2 16 Cr. 466 (NSR), (S.D.N.Y. March 6, 2019), ECF No. 233.

Like the defendants in *Scali, Cohen, Murphy, and Madoff*, May persisted in his crimes for many years—from his late 50’s to his late 70’s. Having chosen to successfully commit extremely serious crimes at that age, and for such a sustained duration, May should not be able to claim now that age is a significant mitigating factor.

B. May’s Health Conditions Do Not Justify a Variance or Departure from the Guidelines

With respect to May’s arguments about his health, neither a downward departure pursuant to USSG §§ 5H1.1 or 5H1.4 nor a variance pursuant to Section 3553 is warranted because May does not have any grave or serious infirmity that cannot be addressed by the Federal Bureau of Prisons (“BOP”). It is the defendant’s burden to show an extraordinary health issue given “[t]he general presumption is that the defendant’s circumstances are not unusual enough to justify departure.” *United States v. Workman*, 602 F. App’x 13, 15 (2d Cir. 2015) (summary order) (alteration in original) (citation and quotation marks omitted); *see also Sapia v. United States*, 433 F.3d 212, 219 (2d Cir. 2005) (“Except in extreme situations, physical condition is not a basis for downward departures.”).

To warrant such a departure, the “defendant must be seriously infirm with [a] medical condition that cannot be adequately cared for by [the] Bureau of Prisons.” *United States v. Cutler*, 520 F.3d 136, 172 (2d Cir. 2008) (alterations in original) (citation omitted); *see also United*

States v. Sherman, 53 F.3d 782, 788 & n.11 (7th Cir. 1995) (noting that to depart downwardly, the court “must make a factual finding that the Bureau of Prisons is not able to care for [defendant’s] medical problems,” and “[t]here are virtually no medical problems that the Bureau’s health care delivery system cannot respond to adequately, either within its institutions or on a contract consultant basis . . .”). As with any other characteristic of the defendant, the Court also can consider health issues when making its determination under Section 3553(a) in the context of the totality of the circumstances.

The evidence May presents falls far short of meeting his burden for a § 5H1.4 departure or showing that a health-related variance is warranted under Section 3553(a). May does not claim that his conditions of [REDACTED]

[REDACTED] (Def. Mem. Ex. 1) are acute, atypical, or incapable of being treated by the BOP. His conditions are the sort of maladies commonly experienced by defendants in custody and routinely cared for by the BOP.

Other courts have not hesitated to decline a defendant’s request for a downward departure for conditions more serious than May’s. In *United States v. Turner*, 531 F. Supp.2d 123 (D.D.C 2008), for example, a court sentenced a defendant on charges of fraud and bribery to imprisonment and denied a downward departure based upon age and infirmity. *Id.* at 124-25, 127-28. At the time of the defendant’s sentencing in *Turner*, the defendant had the following issues:

[A]sthma requiring treatment with steroids and inhalers; sleep apnea requiring the use of a continuous positive airway pressure (“CPAP”) device and oxygen at night; post-traumatic stress disorder resulting in headaches and seizures; congestive heart failure; gout and degenerative joint disease occasionally requiring treatment with narcotics; diabetes, which was treated by medication but not fully controlled; severe peripheral neuropathy; renal failure; temporary spells of blindness; and a possible autoimmune disease such as lupus.

Id. at 127. In denying the defendant’s motion for downward departure in *Turner*, the court noted that the defendant’s conditions (like May’s) were chronic rather than acute, and that the BOP could

provide care for the defendant. *Id.* In *United States v. Tucker*, 986 F.2d 278 (8th Cir. 1993), the Eighth Circuit reversed a district court's decision to depart downwardly for a defendant who suffered from stress associated with prosecution, degeneration of the jaw bone, dizziness, eye trouble, frequent colds, tooth problems, shortness of breath, heart palpitation, arthritis, cramps in her legs, a painful shoulder, knee problems, pressure in her chest, and who had clinically died for four minutes during a surgery. *Id.* at 280. The Eighth Circuit noted that the Guidelines indicate that "departures were intended to be quite rare, and thus should be restricted to situations in which substantial atypicalities are found to exist." *Id.* (citations and quotation marks omitted); *see also United States v. Kurland*, 718 F. Supp. 2d 316, 318 (S.D.N.Y. 2010) (imposing a custodial sentence and finding that medical issues of defendant convicted of securities fraud including hyperlipidemia, diabetes mellitus, and prostate cancer in remission did not warrant a downward departure).

Finally, while the Government is sympathetic to May's health issues, it bears noting that these ongoing conditions did not preclude him from traveling, meeting with his victims, and otherwise committing the instant offenses. They also should not prevent him from serving a significant prison sentence for these crimes.

VI. Conclusion

On the facts of this case, a sentence within the Guidelines range is appropriate and just. Such a sentence would adequately reflect the seriousness of May's decades-long array of crimes, provide just punishment, and send a message to would-be fraudsters that a substantial jail term is the likely consequence of such criminal conduct. A sentence substantially below the Guidelines range would be perceived by the public and the victims as a slap on the wrist, and would fail to serve the essential sentencing goals of providing just punishment, affording deterrence and promoting respect for the law.

Dated: White Plains, New York
July 26, 2019

Respectfully submitted,

GEOFFREY S. BERMAN
United States Attorney

By: /s/
Vladislav Vainberg
Margery Feinzig
Assistant United States Attorneys
(212) 637-1029 / (914) 993-1903

cc: Defense counsel (via ECF)

2:50 PM

09/20/01

Cash Basis

Executive Compensation Planners, Inc.
Balance Sheet
As of September 20, 2001

	<u>Sep 20, 01</u>
ASSETS	
Current Assets	
Checking/Savings	
ECP, INC. Regular	-141,114.60
ECP-Custodial	390,268.17
<hr/>	
Total Checking/Savings	249,153.57
Other Current Assets	
Loan Receivable	16,941.72
Loan Receivable	1,347.78
<hr/>	
Total Other Current Assets	18,289.50
Total Current Assets	267,443.07
Fixed Assets	
Computer Equipment	7,349.75
Computer Equipment-A/D	-2,452.00
Equipment	72,748.20
Equipment-A/D	-66,478.00
Furniture & Fixtures	31,592.00
Furniture & Fixtures-A/D	-31,592.00
Leasehold Improvements	10,797.00
Leasehold Improvements-A/D	-4,370.00
Transportation Equipment	77,467.00
Transportation Equipment-A/D	-14,460.00
<hr/>	
Total Fixed Assets	80,601.95
Other Assets	
Officer Loans	913,926.09
Total Other Assets	913,926.09
TOTAL ASSETS	<u>1,261,971.11</u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Credit Cards	
Chase Credit Line	13,775.09
<hr/>	
Total Credit Cards	13,775.09
Other Current Liabilities	
Federal Withholding	7,993.80
Pension Payable	1,460.00
State Taxes	170.86
<hr/>	
Total Other Current Liabilities	9,624.66
Total Current Liabilities	23,399.75
Long Term Liabilities	
Loan Payable -	201,000.00
Loan Payable -	25,000.00
Loan Payable -	10,000.00
Loan Payable -	62,500.00
Loan Payable -	195,969.00
Loan Payable -	103,539.00
Loan Payable -	423,539.04
Loan Payable -	117,025.26
Loan Payable -	99,000.00
Loan Payable -	88,274.00
Loan Payable -	166,000.00
Loan Payable -	40,000.00
<hr/>	
Total Long Term Liabilities	1,531,846.30
Total Liabilities	1,555,246.05

Exhibit 2

Filed Under Seal

Hector May, under federal probe, cast influence across Rockland

Robert Brum, rbrum@lohud.com

Published 6:00 a.m. ET April 4, 2018 | Updated 8:58 a.m. ET April 4, 2018



(Photo: TJN file photo)

When a Pearl River hedge-fund operator was snagged for running a \$150 million Ponzi scheme a decade ago, Hector May warned investors to be extra careful when choosing someone to manage their finances.

"I have a lot of empathy for the people who got hurt, but before you invest a million dollars, do your due diligence," May said in an interview at the time of James Nicholson's 2009 arrest. "Otherwise, it's like going to get a heart operation and you don't even know if he's a doctor."

May told The Journal News that investors should ask an attorney or accountant to perform "due diligence" on two or three possible financial planners. "It may cost a few thousand dollars, but it will help ensure an investor

is protected down the road," he said.

HECTOR MAY: Rockland business titan facing federal probe for stealing clients' funds (</story/news/local/rockland/2018/03/30/rockland-hector-may-probe-stealing-funds/470334002/>).

PATRICK FARM: Judge reverses rulings, sending housing plan back to square one (</story/news/local/rockland/2018/04/03/patrick-farm-housing-plan-back-square-one/481484002/>).

ADVERTISEMENT

ROCKLAND REAL ESTATE: Nyack's Pretty Penny back on the market for \$4.75M (</story/money/real-estate/homes/2018/04/03/nyacks-pretty-penny-back-market-4-75-m/481943002/>).

May, the politically connected owner of a New City investment firm, now finds himself the target of a federal investigation into allegations of stealing his client's money from the nationwide brokerage firm he represented, according to the Financial Industry

Replies 5 free articles left. Create your account.

Word of the 77-year-old Orangeburg man's legal troubles has been disturbing to some of the people who know him as an influential voice in economic discussions and a ubiquitous presence at community events.

ADVERTISEMENT



Over the course of several decades, he had advised county executives, fought for the poor, advanced the causes of Latinos and sat on the boards of business associations and nonprofits across Rockland. He and his firm contributed to political campaigns on both sides of the aisle.

May appeared to have reached the pinnacle of success — even receiving the Rockland Business Association's Pinnacle Award just two years ago.



[Buy Photo](#)

"I'm shocked and disappointed," former Rockland County Executive C. Scott Vanderhoef said about May's entanglement with the Justice Department. "Obviously it's still ongoing. From my perspective I always found him to be straight up."

Vanderhoef appointed May to a panel in 2012 to help decide the fate of the financially ailing Summit Park Hospital and Nursing Care Center. May railed against the losses being piled up at the county-owned facility, and criticized lawmakers for Rockland's mounting budget deficits.

"He attacked some of our policies during the Great Recession," Vanderhoef recalled. "He saw government from a business point of view. I didn't always agree with him."

Bill Madden, director of external affairs for Suez, said May had been "omnipresent in the business community for 15 years," often the master of ceremonies or honoree at myriad affairs.

Madden said May had been a fixture on "the circuit," the series of banquets and charity events frequented by community leaders.

"I'm not surprised if I see Hector because he's always involved, either on the committee, or he's contributing to it financially by buying an ad or making a contribution to it," Madden said.

Madden served alongside May as a fellow member of the [Rockland Business Association](https://www.rocklandbusiness.org/) (<https://www.rocklandbusiness.org/>)'s Board of Directors. May recently resigned as the RBA's vice chair, although his name was still listed on its website on Tuesday.

"He's part of the fabric of Rockland," Madden said. "I've never heard anything negative associated with the man."

Urged spending restraint

The New City offices of May's company, Executive Compensation Planners, were deserted last week, and he has not replied to messages left there and at his home.

His [LinkedIn profile](https://www.linkedin.com/in/hector-may-43a6abb1/) (<https://www.linkedin.com/in/hector-may-43a6abb1/>) lists him as "Cheif (sic) Compliance Officer and RIA" from January 1980 to present at the company, which is described as "a registered investment advisory firm specializing in financial and estate planning."



The exterior of the Rockland County Office Building in New City, Jan. 19, 2017. (Photo: Mark Vergari/The Journal News)

May's past comments about Rockland's finances show him resolutely demanding that elected leaders rein in spending as the county's deficit ballooned.

In 2012 he told a Rockland Legislature budget hearing that years of overestimating revenues and other mistakes were responsible for a credit rating teetering on the brink of junk status.

And May's letter to the editor in September 2013, just two months before voters would select a new county executive, chastised county leaders for misleading taxpayers about the deficit.

"The voters need to be mindful of candidates orchestrating Rockland County's financial crisis," he wrote.

May supported the eventual winner, Ed Day, who named May to head his transition team. Day has made eliminating the deficit a major thrust of his administration.

'Champion for the poor'

The list of the organizations where May had an impact is a long one.

He was treasurer of Housing Opportunities for Growth, Advancement and Revitalization, known as HOGAR, in the 1990s.

In 2005 the Rockland Development Council named May outstanding volunteer of the year, noting his contributions to charities including St. Dominic's Home, People to People and the Monsey Medical Center.

A member of Hispanic Coalition of Rockland County, he raised concerns in 2002 that a county redistricting of Haverstraw village could curb Hispanics' clout.



Rich Neidhart, of New City, prepares grocery bags at Rockland's largest food bank People to People in Nanuet on Tuesday, Oct. 25, 2016. (Photo: Michael D'Onofrio/The Journal News)

Diane Serratore, executive director of People to People, said May was one of the key people who helped it grow from a "mom-and-pop" operation into Rockland's largest food bank. He formerly served on the nonprofit's board of directors.

"Hector really has been a champion for addressing issues about hunger, for the poor," Serratore said Monday. "He's always a strong ally for the volunteers and the workers."

She added: "All of us are shocked and distressed, but we're not making any rush to judgment."

Twitter: [@Bee_Bob](https://twitter.com/@Bee_Bob) (http://@Bee_Bob).

Read or Share this story: <https://www.lohud.com/story/news/local/rockland/2018/04/04/hector-may-influence/477901002/>